Colleen Thompson
Associate Director
Federal Regulatory

AT&T Services, Inc.
1120 20th Street, N.W.
Suite 1000
Washington, D.C. 20036
Phone: 202-457-3020
Email: cm7512@att.com

August 21, 2017

Via Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Re: Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79
Ex Parte Communication

Dear Ms. Dortch:

On August 17, 2017, AT&T representatives Robert Vitanza and the undersigned met with Suzanne Tetreault, Aaron Goldschmidt, Erica Rosenberg, Garnet Hanley, David Sieradzki and Charles Eberle of the Wireless Telecommunications Bureau ("WTB") to discuss the Accelerating Wireless Broadband Infrastructure NPRM.

AT&T urged the Commission to reduce federal, state and local barriers to infrastructure deployment, which will accelerate the provision of broadband service and thus, provide significant benefit to all Americans. AT&T's remarks were consistent with its filed comments in the above captioned matter and the attached presentation.

Pursuant to Section 1.1206 of the Commission's rules, an electronic copy of this letter is being filed for inclusion in the above-referenced docket. Please contact me if you have any questions.

Sincerely,

Colleen Thompson

cc: Suzanne Tetreault
Charles Eberle
Erica Rosenberg
Aaron Goldschmidt
Garnet Hanly
David Sieradzki

Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment

August 17, 2017

Agenda:

- Reduce federal, state, & local barriers to broadband infrastructure deployment
  - Barriers continue to exist
  - Not feasible to subject 1000s of small cells to those regulatory impediments
- Reduce NHPA/NEPA challenges for small cell deployments
  - Categorical exclusion for mitigated sites in a flood plain
  - Broader categorical exclusion for small cells
  - Categorical exclusion for new and replacement poles
  - Reform Tribal processes
  - Twilight Towers grandfathering
- Reduce state/local barriers to wireless infrastructure deployment
  - Sections 253/332--authorize the FCC to address regulatory barriers
  - Clarify the limits of state/local regulation of wireless infrastructure (esp. small cells) as to: prohibitions, fees, and permitting processes
  - Section 332 deemed granted remedy
  - Streamlined complaint process

Update NHPA/NEPA Approach to Remove Challenges to Deploying Necessary Wireless Infrastructure

Simplify and eliminate inconsistencies in application of NHPA Sec. 106 review.

- Recently adopted categorical exclusions for small cells are only marginally helpful because they are difficult to implement and uniformly apply
- Moreover, inconsistencies in the NPAs create illogical results:
  - Replacement towers contain an exclusion, but replacement poles do not
  - Tribal review is often needed due to factors not based on tribal concerns (e.g. age of a non-tower support structure, proximity to historic district)
  - TCNS inquiries are deemed approved if no tribe responds, but not if tribe expresses and interest and the never approves or denies a request
  - Tribal review is required to place poles in previously disturbed ground in a ROW
- The FCC can simplify and take steps to accelerate small cell deployments by adopting broader exclusions for small cells and targeted exclusions for their support structures

Update NHPA/NEPA Approach to Remove Challenges to Deploying Necessary Wireless Infrastructure

Steps the FCC can take to simplify and eliminate inconsistencies in NHPA Sec. 106 review

- New and Replacement Poles: Exclude new and replacement poles that support small cell facilities from Sec. 106 review (even if in a historic district) if:
  - the pole is located in a ROW that is actively used for other poles and the new/replacement pole is limited in size to 50' or 10% taller than other structures in proximity to the pole, whichever is greater (Ex. State legislation);
  - if the pole is not located in a ROW or with other poles, a replacement pole is not "substantially larger" than the pole it is replacing.
- Small Cell on New or Existing Structures:
  - Clarify that the existing categorical exclusion for small cell facilities that fit within an enclosure (or if the antenna is exposed, within an imaginary enclosure) of up to 6 cubic feet in volume applies per provider's equipment.
  - Providers require flexibility to use alternative designs to deploy small cell equipment (ex. Small cell equipment evolution)
  - Would not apply if the facility is located on a National Historic Landmark.

Update NHPA/NEPA Approach to Remove Challenges to Deploying Necessary Wireless Infrastructure

— Tribal reform—record demonstrates the need for reform

- 60-day Tribal review shot clock
  - *"deemed approved" if exceed shot clock*
  - *applicants would self-certify tribal compliance through TCNS*
  - *would end the escalation process*
- Tribal site monitors – Rules not needed to protect sensitive sites.
  - *sec. 106 NPA includes process to address post-review discoveries*
  - *unnecessarily increases tribal review costs*
- Geographic Areas of Interest – Will curb excessive fees and reduce delays
  - *Tribes should explain to the FCC the cognizable interest in a geographic area*
  - *Reduce the areas to counties*
- Clarify a Tribe's role as Contractor or Consultant –Clarify that a Tribal representative may not charge fees for ordinary course of review of project materials or surveys.

Other Issues

- **Flood Plains:** Revise rules so that an environmental assessment is not required for siting in a floodplain when appropriate engineering or mitigation requirements have been met.
- **Twilight Towers** – Grandfather/exempt twilight towers due to ambiguity in how to comply with Section 106
  - Exclude from Sec 106 review colocations on pre-3/7/05 towers
  - Remove the cloud of potential enforcement action for pole owners arising from all towers constructed before the Section 106 NPA, 3/7/05
  - Establish a reasonable process to bring post-3/7/05 non-compliant towers into compliance:
    - voluntary as goes through collocation
    - definitive review timelines (deemed approved if beyond timeline)
    - utilize existing TCNS and E-106 processes

FCC is Authorized to Preempt State/Local Barriers to Wireless Facility Deployments

FCC should signal its intent to use its Section 253 and 332 preemption authority to remove state/local processes that hinder wireless infrastructure deployment.

- Secs. 253 & 332(c)(7) authorize the FCC to bar state/local actions or practices that "prohibit or have the effect of prohibiting " service. They should be read in harmony.
- The "effective prohibition" standard is met when a state/local action or practice materially inhibits or limits the ability to provide telecommunications services.
  - A barrier need not be an absolute prohibition; actions that inhibit service can effectively prohibit the provision of service.
- The "significant gap" standard should be rejected.
  - Especially not appropriate for analyzing small cell deployments, which expand capacity & throughput.
  - Munis not qualified to substitute their judgment on technical issues
- Calling their actions "proprietary" does not insulate municipal action and practices from Sec 253, as they act in a regulatory capacity when managing ROW.
- Section 253 applies to municipally-owned utility poles, even if Section 224 does not apply

Declare actions/practices that Secs 253 & 332 prohibit

Prohibitions and unevenly applied restrictions on wireless facility placement violate Section 253 and 332.

- ROW prohibitions – ex. light poles and traffic control poles. Especially problematic when the electric utility also prohibits
- Moratoria – Express or de facto. Continue to see them introduced. Ex. S.C. city
- Above-ground facility prohibitions: Prohibitions on above ground facilities disproportionately impact wireless service.
- Distance/placement prohibitions –arbitrary minimum distances between nodes or limits where nodes may be placed (ex. no parks, mid-block placement, min. 500' separation).
- These prohibitions are not generally covered by Sections 253 (b) or (c) safe harbors because not applied in a competitively neutral or non-discriminatory manner and do not promote public safety or welfare.

Declare actions/practices that Secs 253 & 332 prohibit

ROW and municipal pole access fees must be cost-based

- Few states passed small cell legislation with reasonable fees and we still need FCC assistance for those that refuse.
  - Munis continue to impose fees (ex. KY, NY, & CA)
- And, these unreasonable fees for ROW and municipal structure access can and, if allowed to continue, will preclude wide-scale small cell and broadband deployment
- Clarify that "fair and reasonable" ROW and on municipally-owned ROW structures access fees must be cost-based (additional cost caused by the attachment) and that fees are not fair and reasonable if they are:
  - Revenue-based, as not related to management or use of the ROW.
  - In-kind, as can't applied competitively neutrally or without discriminating
  - Competitive bidding
  - Justified to finance city operations
- Set presumptively reasonable annual fee for ROW and municipal pole access (ex. $50) that can be rebutted
- Consistent and rational fees that are proportionately applied will allow all wireless providers to compete on an equal basis and expedite broadband deployment.

Declare actions/practices that Secs 253 & 332 prohibit

Unreasonable aesthetic restrictions on wireless small cell facilities in the ROW violate Section 253 and 332.

- Given the unfettered right to regulate small cells for aesthetic reasons, many municipalities will restrict them outright or impose so many limitations and requirements so as to effectively prohibit them. (Ex. KY munis)
- This is especially concerning in light of the propensity of many munis to prohibit placement due to aesthetics when the real reason is anxiety about RF exposure
- Requirements that all deployments "camouflage" equipment or meet specific configurations are problematic.
- Even our most streamlined designs are sources of objection when standards are arbitrary (Ex. State SHPO)

Adopt remedies and procedures to provide greater predictability for siting applicants

- A "deemed granted" remedy under Section 332 would add certainty and reduce delays
  - Wireless infrastructure applications not covered by Section 6409 should be "deemed granted" if a jurisdiction fails to act on the application within the time limits of the Section 332(c)(7) shot clock.
  - The shot clock begins running when an application is filed

- A streamlined complaint process for violations of Section 253 would facilitate timely resolution of disputes and minimize delay
  - Complaint filing at FCC
  - FCC can render a decision on the regulation, including possible preemption
  - Includes a shot clock for FCC action that can be tolled
  - Similar to Section 224 complaint, but with shot clock